

Humbly sheweth,

THAT I being Creditor to Gilbert Mathieson Merchant in Leith, and he having become bankrupt in Aprile 1729, and fled to the Abbey for Sanctuary; And I being informed, that he had made several Settlements, and granted heretable Securities long after the contracting of my Debt, and particularly to his own Brother, to very near the Value of his heretable Subjects, did thereupon use Diligence by Inhibition and Adjudication, &c. In order to secure my Debt, and intitle me to quarrel these heretable Securities granted to my Prejudice, and my Inhibition is duly registrat in the Month of Aprile, and my Adjudication decreed in June 1729, which was as soon as the Form would allow, but I have not yet been able to procure my Decreet extracted, in Respect, that some of these other Persons, who got private Inseiments from him, gave in Petitions once and again to your Lordships, craving, That these Lands disposed by Mathieson to them, might be delete out of my Adjudication, and I being obliged to answer these several Petitions one after another, tho' they were refused, the Matter was thus delayed, till about the 24th of July, and then when the Decreet was wrote out, and ready to be signed, there was a new Petition drop'd in upon the 30th of July, the very last Night of the Session, in Name of three Gentlemen calling themselves Trustees for Mathieson's Creditors, craving your Lordships would recal my Decreet, at least to allow them a Hearing in Presence, and I having no Opportunity then to make Answer, your Lordships were pleased upon the 31st July, "to appoint a Hearing in Presence against the 1st of November, and that the Cause might be inrolled in the Presedent's Hand-roll, for that Effect, and stoped Extract of the Decreet in the mean Time."

The Cause was accordingly inrolled, and hath stood in the foresaid Roll ever since, but has yet been called, which is the Occasion of this present Application.

The State of the Case betwixt these Petitioners and me, is, That upon the 30th of May 1729, long posterior to my Inhibition and the executing of my Summons, there is a Disposition signed at the Abbey by Mathieson, in favours of Alexander Glas, Alexander Hay Writers to the Signet, and Alexander Young Writer in Edinburgh for themselves, in so far as they were Creditors, and for the Behoof of his other Creditors therein narrated, or which should appear and instruct themselves to be Creditors, and be received and assumed by the foresaid Trustees as such within

Days after the Date: And upon this Disposition these Trustees were not in-seft, till the 23d of June, which is after the Date of my Adjudication.

It's to be observed, 1mo. That this Disposition is by a Nottour bankrupt, in favours of Persons, or Trustees named by himself: For the Disposition does not mention nor narrate, that there had been any previous Meeting of the Creditors, or that the Creditors had elected these Trustees. 2do. It does not appear, that any of these Trustees were Creditors in Sixpence at the Time of the Disposition. 3tio. It's thereby expressly provided, that they or any two of them shall have Power to sell and dispose of the haill Subjects, or any Part thereof, at what Rates and Prices they think fit, and the Purchaser shall only be liable to y the Price to them, or their Cashier, and no further concerned with the Creditors, and they and their Cashier are only to be accountable to the Creditors after Deduction of all Expences, and that Sallaries or Gratifications shall be allowed them, and of what they shall pay out to Lawiers, &c. In the first Place, without Necessity of bringing the Subjects to a publick Roup, or having the Creditors Consent to the said Sale. 4to. They are thereby impower'd to name, input output Factors, Cashiers, &c. And to give them what Sallaries they think fit, and compt a with them at their Pleasure, and to be no further liable for them, than that they were h and repute responsible at the Time of their Entry upon their Office, with several oth ivisions and Declarations in favours of the said Trustees.

It's humbly subjected to your Lordships, if this be a Right truly for the Behoof and Advantage of the Creditors, or not rather for the Behoof of the Common Debitor, and these Persons named by him, who doeth not appear to have the least Interest in the Subject, 2do. Whether or not a Disposition execute after this Manner, can debarr any Lawfull Creditor, who hath no manner of Way and making good Debt. More especially, 3tio That by the said Diligence, for, expressly provided and d that it should be in the Power and Disposition, or of any other Right legal or conveyed acquired or to be acquired by the one without Prejudice of the other; y by the above Provisions ved favours of the Trustees, it is in their Power to appoint the Creditors, and make what Accompt of the Subjects they think fit, shall (as some other Trustees of this Nature have done) state 30 or 40 L. sterl. a Year, own and their Clerks Pains, besides their whole other Expences, Factor-Fee, &c. It w ear in a short Time what good Accompt it will turn to the Creditors.

The Petitioner humbly conceives, he need say more upon this Point, but to re-mind your Lordships of two late Decisions in the precise paralel Case, the one betwixt Charles Bell riter to the Signet, and the Trustees for M'Clellan of Barclay's Creditors, and the other betwixt Mr. James Cheyne and the Trustees for Merchiston's Creditors: In both which Cases your Lordships allowed the Adjudications to be extracted, unless it could be proven, that they had entered into the Concert and Measure with the other Creditors, which will not be so much as pretended in the Petitioner's Case.

If my Decreet should be stoped, it would put me to a great dale of unnecessar Expence now in constituting my Debt against the Representatives of Gilbert Mathieson the Common Debitor, whereas, if the Decreet formerly pronounced against him in his Lifetime be allowed to be extracted, and the Clerks of the Bill-Chamber ordained to receive it in and record it, notwithstanding that the 60 Days are elapsed, it would save all that Expence, and prejudice no Party.

May it therefore please your Lordships, to consider the Premises, and to remove the Stop, and allow my former Decreet to be Extracted, and ordain the Clerks of the Bill-Chamber, to receive in and record the same, notwithstanding that the threescore of Days are elapsed.

According to Justice. &c.

JO. CARLYLE